

# Notice of Allowability

Application No.

10/008,766

Examiner

Michael P. Ferguson

Applicant(s)

MIMLITCH ET AL.

Art Unit

3679

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 27 March 2007 interview, 15 March 2007 amendment.
2. ☒ The allowed claim(s) is/are 1,2,6,9,10,16-18,20-32,38-40 and 42-45.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 03/15/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 03/27/07
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

***Election/Restrictions***

1. Newly amended claims 46, 48-54, 57-66, 68-71 and 73-79 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1, 2, 6, 9, 10, 16-18, 20-32, 38-40 and 42-45, drawn to a coupling member, classified in class 403, subclass 167.
  - II. Claims 46, 48-54, 57-66, 68-71 and 73-79, drawn to a method of converting a two-post equipment rack to support equipment configured to couple to four-post equipment racks, classified in class 29, subclass 897.31.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the claimed method of Group II can be practiced with another materially different product, in that the claimed method does not require the structural features of the vertical support member, the equipment attachment flange or the first and second torsion members of the claimed coupling member of Group I. Furthermore, the claimed coupling member of Group I can be used in a materially different process, in that a piece of electronic equipment can be

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mounted to a rack via directly attaching the rack and the equipment to the respective first and second torsion members of the coupling member, opposed to attaching the rack and the equipment to the first and second lateral ends of the coupling member, as set forth in the claimed method of Group II.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46, 48-54, 57-66, 68-71 and 73-79 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Elizabeth Philip Dahm on March 27, 2007.

The application has been amended as follows:

Canceled claims 13, 14, 19, 41, 46, 48-54, 57-66, 68-71 and 73-79.

In claim 1, in line 9 after "coupling member to" inserted --a respective post of--.

In claim 1, in line 13 after "the vertical support" inserted --member--.

In claim 31, in line 14 after "the vertical support" inserted --member--.

5. The following is an examiner's statement of reasons for allowance:

As to claim 1, Siemon et al. (US 5,542,549) discloses the claimed coupling member with the exception of comprising a first torsion member attached to the vertical support member at the first longitudinal end, the first torsion member including an aperture for receiving a fastener for attaching the coupling member to an adjacent coupling member.

As to claim 32, Siemon et al. discloses the claimed two-post rack system with the exception of the first coupling member comprising a first torsion member attached to the vertical support member at the first longitudinal end, the first torsion member including an aperture for receiving a fastener for attaching the first coupling member to an adjacent coupling member; and a second coupling member comprising at least one aperture for receiving a fastener for coupling the second coupling member to an adjacent coupling member.

There is no teaching or suggestion, absent the applicants' own disclosure, for one having ordinary skill in the art at the time the invention was made to modify the coupling member disclosed by Siemon et al. to have the above mentioned elemental features.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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03/27/07